

AMENDED IN ASSEMBLY JANUARY 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

Assembly Constitutional Amendment

No. 23

Introduced by Assembly Member Richman

September 8, 2005

Assembly Constitutional Amendment No. 23—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 8 to Article XX thereof, relating to public employee benefits.

LEGISLATIVE COUNSEL’S DIGEST

ACA 23, as amended, Richman. Public employee ~~defined and contribution and hybrid~~ retirement plan.

The California Constitution reserves a role for the elected officials of this state in the governance of public pension systems through several means, including the power to determine the appropriateness of retirement benefits for public employees.

This measure would establish the California Public Employee ~~Defined Contribution and Hybrid Plans~~ *Retirement Plan*. The measure would provide that on and after July 1, 2007, any person hired by a public agency shall enroll ~~only in a hybrid plan or in a defined contribution plan, as defined, of a public pension or retirement system, and is prohibited from enrolling in a defined benefit plan, as defined.~~ The measure would permit an active member of a defined benefit plan, during a specified period, to transfer a sum equal to the member’s interest in the defined benefit plan to a defined contribution plan or hybrid plan *defined benefit plan*. This measure would permit a new employee to enroll in a voluntary defined contribution plan.

The measure would prescribe contribution rates and other requirements for defined contribution plans ~~and hybrid plans~~, would establish formula for providing defined benefits ~~under hybrid plans~~, would require disability and death benefits to be provided under those plans, and would specify the entities responsible for administering those plans. The measure would permit *the state, local agencies, and the University of California*, under a defined contribution plan, to exceed contribution limits ~~upon a specified finding by the Regents of the University of California, if approved in a specified manner.~~

The measure would require that any statute implementing the measure be enacted only if approved by a 2/3 vote of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 WHEREAS, California's state and local governments face
2 severe budget crises because elected officials spend more than
3 they receive in taxes. A fair and balanced approach to restoring
4 long-term fiscal responsibility must include limiting the cost of
5 government employee pensions, which have grown dramatically
6 in recent years, threatening the long-term investments California
7 needs in education, infrastructure, health care, and public safety;
8 and

9 WHEREAS, California has among the nation's most generous
10 public pension plans, providing some employees with more than
11 100 percent of their final years' salary at age 50. During the past
12 20 years, most private employers have moved to defined
13 contribution plans, such as 401(k) plans, to limit costs, promote
14 responsible budgeting, and improve fiscal accountability; and

15 WHEREAS, The struggle to meet the demands of generous
16 pension plans negotiated by elected officials has increased state
17 and local government debt by more than \$12 billion, leaving
18 more than \$30 billion in additional unfunded costs for future
19 retirees. ~~Creating defined contribution and hybrid plans the~~
20 *California Public Employee Retirement Plan* for all new state
21 and local government employees will help to eliminate new
22 unfunded liabilities; and

23 WHEREAS, Under current law, existing state and local
24 government employees cannot have their retirement plans
25 changed by this measure. Promises made to all current public

employee retirement system members will be kept under this measure. ~~A switch from defined benefit plans to defined contribution and hybrid plans~~ *The newly enacted California Public Employee Retirement Plan* will only be required for employees hired by public agencies on or after July 1, 2007; and

WHEREAS, Unlike current defined benefit pension plans, ~~the defined contribution and hybrid plans component of the California Public Employee Retirement Plan~~ will allow employees to enhance their credit standing, control their assets, move some or all of their pension assets from one job to another, and pass along remaining funds to their heirs; and

WHEREAS, ~~Defined contribution and hybrid plans~~ *The California Public Employee Retirement Plan* will make government officials more accountable for spending public money, reduce the long-term cost of retirement plans, provide greater budget predictability, and help restore fiscal responsibility to state and local budgets; and

WHEREAS, It is fair and just to preserve, and this measure does not cancel or eliminate any defined benefit plans for existing employees; disability benefits for new and existing employees; or death benefits for families of new and existing employees, including police, fire, and other public safety workers; and

WHEREAS, The retirement board of each public pension or retirement system, including, but not limited to, the California Public Employees' Retirement System, the California State Teachers' Retirement System, and the University of California Retirement System, will continue to have fiduciary responsibility over the assets of the public pension or retirement system under this measure and this measure does not diminish that responsibility or the role of the retirement board or the public pension or retirement system subject to the rights of the participants and beneficiaries; and

WHEREAS, The retirement board of each public pension or retirement system will continue to have responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participant and their beneficiaries; now, therefore, be it

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 2005-06 ~~First~~

1 ~~Extraordinary~~ *Regular* Session commencing on the ~~sixth day of~~
2 ~~January 2005~~ *sixth day of December 2004*, two-thirds of the
3 membership of each house concurring, hereby proposes to the
4 people of the State of California, that the Constitution of the
5 State be amended as follows:

6 First—That Section 8 is added to Article XX thereof, to read:

7 SEC. 8. (a) The California Public Employee—~~Defined~~
8 ~~Contribution and Hybrid Plans are~~ *Retirement Plan* is hereby
9 established and shall be offered by all public agencies to their
10 employees as provided in this section. *The plan shall consist of a*
11 *required defined benefit plan and a voluntary defined*
12 *contribution plan.*

13 (b) Notwithstanding any other provision of law or this
14 Constitution, on and after July 1, 2007, any person hired as a new
15 employee by a public agency shall ~~not~~ enroll in a ~~defined benefit~~
16 ~~plan and shall enroll only in a hybrid plan~~ *the California Public*
17 *Employee Retirement Plan* offered by his or her employer, unless
18 ~~he or she elects to enroll in a defined contribution plan.~~ *employer.*

19 (c) ~~On and after July 1, 2007, and before January 1, 2008, any~~
20 ~~active member of a defined benefit plan offered by any public~~
21 ~~agency may transfer a sum equal to the net present value of that~~
22 ~~member's interest in the defined benefit plan to a defined~~
23 ~~contribution plan or a hybrid plan as defined in this section.~~

24 (c) *The plan shall be administered by the Public Employees'*
25 *Retirement System, the State Teachers' Retirement System, a*
26 *county or district retirement system subject to the County*
27 *Employees' Retirement Law of 1937, a charter city, or the*
28 *University of California Retirement System.*

29 (d) *A public agency that provides disability benefits for its*
30 *employees shall continue to provide disability benefits for its*
31 *employees, including persons employed after June 30, 2007. A*
32 *public agency that provides death benefits for families of its*
33 *employees shall continue to provide death benefits for its*
34 *employees, including persons employed after June 30, 2007.*

35 (d)

36 (e) As used in this section, the following terms apply:

37 (1) "Defined benefit plan" means a plan providing a pension
38 benefit determined by a formula based on factors such as age,
39 service credit, and salary. *An employee's right to vested benefits*
40 *under the plan shall be established by law.*

1 (2) “Defined contribution plan” means a plan providing a
2 pension benefit that is equal to the combined employer and
3 employee contributions plus interest and net investment earnings,
4 less administrative expenses and other costs. An employee’s
5 vested right to receive employer contributions made to the plan
6 on his or her behalf shall be established by law.

7 (2)

8 (3) “Normal retirement age” means 55 years of age for public
9 safety employees and 65 years of age or the applicable retirement
10 age under Social Security for all other employees. An employee
11 may retire before the normal retirement age at an actuarially
12 reduced rate.

13 (3)

14 (4) “Public agency” means the State of California or a local
15 public agency including, but not limited to, a city, city and
16 county, or county, including a charter city or charter county,
17 district, school district, the Regents of the University of
18 California, California State University and each other political
19 subdivision or public entity of, or organized under the laws of,
20 this State, or any department, instrumentality, board,
21 commission, authority, or agency thereof.

22 (4)

23 (5) “Public safety employee” means a sworn peace officer or
24 firefighter.

25 (5)

26 (6) “Salary” means an employee’s base salary excluding
27 overtime pay, shift differential, vacation pay, and all other
28 additional payments or allowances.

29 ~~(e) As used in this section, a “defined contribution plan”~~
30 ~~means a plan providing a pension benefit that is equal to the~~
31 ~~combined employer and employee contributions plus interest and~~
32 ~~net investment earnings, less administrative expenses and other~~
33 ~~costs, that meets the following requirements:~~

34 ~~(1) The plan shall be administered by the Public Employees’~~
35 ~~Retirement System, the State Teachers’ Retirement System, a~~
36 ~~county or district retirement system subject to the County~~
37 ~~Employees Retirement Law of 1937, a charter city, or the~~
38 ~~University of California Retirement System. Any public agency~~
39 ~~may contract with any private corporation for administrative and~~
40 ~~other services to reduce expenses if the public agency determines~~

1 ~~that its fiduciary responsibility is not diminished by the contract~~
2 ~~for those services.~~

3 (f) (1) *The defined benefit component of the California Public*
4 *Employee Retirement Plan shall provide the following benefit*
5 *formula for an employee who reaches his or her normal*
6 *retirement age:*

7 (A) *One percent of the highest average salary for each year of*
8 *service for an employee who is eligible for Social Security,*
9 *except public safety employees.*

10 (B) *One and 3/4 percent of the highest average salary for each*
11 *year of service for an employee who is not eligible for Social*
12 *Security, except public safety employees.*

13 (C) *Two percent of the highest average salary for each year of*
14 *service for a public safety employee.*

15 (2) *With respect to the defined benefit component of the plan:*

16 (A) *The actuarial normal cost shall be paid in equal amounts*
17 *by the employer and employee.*

18 (B) *The defined benefit shall be calculated based upon the*
19 *employee's highest average salary over a period of three*
20 *consecutive years.*

21 (C) *Surplus assets shall be retained in the plan solely for the*
22 *payment of the defined benefit, disability and death benefits, and*
23 *administrative costs of the plan.*

24 (g) *The defined contribution component of the California*
25 *Public Employee Retirement Plan shall provide the following*
26 *benefit formula that meets the following requirements:*

27 ~~(2)~~

28 (1) *The public agency may contribute up to one dollar (\$1) of*
29 *matching funds for each dollar contributed by an employee, not*
30 *to exceed 4 percent of the employee's salary. A public agency*
31 *may exceed the 4 percent contribution limit for employees who*
32 *elect to participate only in a defined contribution plan and not in*
33 *a hybrid plan, but only to the extent that employer matching*
34 *contributions do not exceed the amount that would be the*
35 *employer's normal cost of the defined benefit component of the*
36 *hybrid plan for the employee plus 4 percent of the employee's*
37 *salary.*

38 ~~(3)~~

1 (2) An employer's contribution to the plan may exceed the rate
2 prescribed in paragraph ~~(2)~~ (1) for any one or more employee
3 groups only in the following circumstances:

4 (A) With respect to employees of the State, if the increased
5 employer contribution rate is approved by a majority of the
6 voters voting on the proposition at a statewide election.

7 (B) With respect to employees of local agencies and districts,
8 if the increased employer contribution rate is approved by
9 two-thirds of the voters voting on the proposition at an election
10 within the jurisdiction of the local agency or district.

11 ~~(4)~~

12 (3) The University of California may exceed the contribution
13 limits established by this subdivision for employees in
14 classifications and positions that the Regents of the University of
15 California find are competitive and need additional contributions
16 to recruit and retain employees.

17 ~~(5) Disability and death benefits shall be provided under the~~
18 ~~plan. The cost of providing disability and death benefits for~~
19 ~~employees shall be paid by the employer, unless otherwise paid~~
20 ~~by the State. Notwithstanding paragraph (1) of subdivision (d),~~
21 ~~death and disability benefits may be determined by a formula that~~
22 ~~may include factors such as age, service credit, or salary.~~

23 ~~(f) As used in this section, a "hybrid plan" means a plan that is~~
24 ~~comprised of a defined benefit component that provides a~~
25 ~~pension benefit determined by a formula based on factors such as~~
26 ~~age, service credit, and salary, and a defined contribution~~
27 ~~component that provides a pension benefit equal to the employer~~
28 ~~and employee contributions to that component of the plan plus~~
29 ~~interest and net investment earnings, less administrative~~
30 ~~expenses, and that meets the following requirements:~~

31 ~~(1) The plan shall be administered by the Public Employees'~~
32 ~~Retirement System, the State Teachers' Retirement System, a~~
33 ~~county or district acting pursuant to the County Employees~~
34 ~~Retirement Law of 1937, a charter city, or the University of~~
35 ~~California Retirement System.~~

36 ~~(2) The defined benefit component of a hybrid plan shall~~
37 ~~provide the following benefit formulae:~~

38 ~~(A) One percent of highest average salary for each year of~~
39 ~~service for employees who are eligible for Social Security,~~
40 ~~except public safety employees.~~

~~(B) One and three-quarters percent of highest average salary for each year of service for employees who are not eligible for Social Security, except public safety employees.~~

~~(C) Two percent of highest average salary for each year of service for public safety employees.~~

~~(3) An employee may not retire under the plan, except for disability, until he or she has attained normal retirement age.~~

~~(4) With respect to the defined benefit component of the plan:~~

~~(A) The actuarial normal cost and payments for any unfunded liability shall be paid in equal amounts by the employer and employees, provided that the contribution rate for any employee shall not increase by more than 2 percent of salary in any year.~~

~~(B) The aggregate employer and employee contributions shall equal the actuarial normal cost and payments for any unfunded liability for each fiscal year. However, in any fiscal year in which the actuarial value of assets exceeds the accrued actuarial liability by 25 percent or more, the aggregate employee and employer contributions shall be reduced, during that fiscal year, to 90 percent of the actuarial normal cost.~~

~~(C) The defined benefits shall be calculated based upon the employee's highest average salary over a period of three consecutive years.~~

~~(D) Disability and death benefits shall be provided under the plan. The cost of providing disability and death benefits for employees shall be paid from assets of the defined benefit component of the plan, unless otherwise paid by the State. Notwithstanding paragraph (1) of subdivision (d), death and disability benefits may be determined by a formula which may include factors such as age, service credit, or salary.~~

~~(E) Surplus assets shall be retained in the plan solely for the payment of the defined benefits, disability and death benefits, and administrative costs of the plan.~~

~~(g) Every public agency that provides disability benefits for its employees shall continue to provide disability benefits for its employees, including persons employed after June 30, 2007. Every public agency that provides death benefits for families of its employees shall continue to provide death benefits for its employees, including persons employed after June 30, 2007.~~

~~(h) An employee of a public agency who is hired on or after July 1, 2007, shall not be eligible for employer-paid retiree health~~

1 benefits until he or she attains normal retirement age and retires.
2 *An employee who retires prior to his or her normal retirement*
3 *age may receive health care benefits available through his or her*
4 *public agency by paying the entire cost of these health care*
5 *benefits.* This subdivision shall not apply to an employee who
6 retires for disability. This subdivision applies only to employees
7 of public agencies who provide health care benefits to retirees.

8 (i) After this section becomes effective, the Legislature may
9 enact a statute that implements this section or that amends any
10 statute that implements this section only by a bill passed in each
11 house of the Legislature by rollcall vote entered in the journal,
12 two-thirds of the membership concurring.

13 Second—That if this measure and any other measure relating
14 to retirement plans of public employees appear on the same
15 statewide election ballot, the provisions of that other measure
16 shall be deemed to be in conflict with this measure. If this
17 measure shall receive a greater number of affirmative votes than
18 that other measure, the provisions of this measure shall prevail in
19 their entirety, and the provisions of the other measure shall be
20 null and void.

21 Third—That the provisions of this act are severable. If any
22 provision of this act or its application is held invalid, that
23 invalidity shall not affect other provisions or applications that can
24 be given effect without the invalid provision or application.